

PART II

AUTHORITY

201. General Policy. This regulation implements the clemency and parole systems authorized by 10 U.S.C. sections 874 and 952-954. It must be read in a manner that is uniform and consistent with good order and discipline within the military as defined by the UCMJ (10 U.S.C. sec. 801-946), the Manual for Courts-Martial, other rules and procedures of the Departments of Defense and Navy and, where appropriate, enforced by corrections policy established by law and regulations implementing 10 U.S.C. sec. 951 (Military Correctional Facilities).

202. Statutory Authority. Title 10 U.S. Code sections 874 and 951-954.

a. 10 U.S.C. sec. 874 states in pertinent part:

*The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President.*

*The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.*

b. 10 U.S.C. sec. 951 states in pertinent part:

(1) The Secretary concerned shall:

(a) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correction facility of his department; and

(b) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(2) Under regulations prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

c. 10 U.S.C. sec. 952 states:

The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

d. 10 U.S.C. sec. 953 states:

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish--

(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged;

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

e. 10 U.S.C. sec. 954 states:

The Secretary concerned may provide for persons who were subject to this authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

203. Regulatory Authority. This instruction must also be read in a manner that promotes uniformity and consistency of application of military justice as set forth in the Manual for Courts-Martial (MCM), the JAGMAN as well as the corrections policy set forth in references (f) and (i).

a. The general principles governing confinement of military personnel within the Department of Defense are, in pertinent part:

(1) Discipline should be administered on a corrective rather than a punitive basis, and military correction facilities should be administered on a uniform basis. It is desirable for persons under sentence of courts-martial or other military tribunals to be accorded uniform treatment, in furtherance of equality within the Department of Defense and in justice to individuals concerned.

(2) The Secretaries of the Military Departments shall provide programs for education, training, rehabilitation, and the welfare of military offenders consistent with this Directive.

b. The general policy governing confinement in the Department of the Navy is as follows:

[The] treatment of persons in naval confinement [will] be uniform and in full accord with the provisions of the UCMJ. The major purpose of all confinement *is deterrence, punishment, and rehabilitation.*

It is also the policy of SECNAV that confined naval personnel retain all of the rights and responsibilities of other service personnel in a duty status except those which are expressly, or by implication, taken away under the provisions of the UCMJ and such regulations as may be promulgated by competent authority.

c. The Department of the Navy's correctional philosophy is set forth in reference (i) and includes a recognition of the fact that punishment alone is seldom corrective. Confinement is punishment because it denies members their liberty and separates them from their families, friends, and most normal activities. It means loss of status and disapproval of the individual offender by society. Confinement sharply limits the offenders, privileges, freedom of action, and opportunities for personal/professional growth.

204. Other Statutes and Regulations. The NC&PB is guided by statutory and regulatory requirements during the clemency and parole review process. The NC&PB will keep itself informed of any programs that have as their purpose the protection of the individual and society from a recurrence of conduct that is either criminal or has a high probability of resulting in criminal conduct, and programs that have as their purpose the implementation of the rights of crime victims and services to crime victims. (See references (p), (u) and (v).) These programs may be required by statute or independently implemented within the Department of Defense and Department of the Navy by instruction or regulation. Upon becoming aware of a statutory or regulatory requirement that has as its purpose providing a service member with the opportunity for treatment and rehabilitation of the underlying problem that has or may have caused or contributed to criminal conduct, the NC&PB will recommend to SECNAV in writing, via the Director, NCPB, that it intends to abide by such statutory or regulatory requirement and will implement such recommendation within 30 days unless directed otherwise. Without further direction and at the expiration of 30 days, the NC&PB will review each offender's case in light of the statutory or regulatory requirement to determine eligibility. If an offender is determined eligible, the NC&PB shall direct that the offender be afforded the opportunity to participate in the program.

205. Delegation of Authority. Except in cases involving the death penalty, life without parole and national security; the Assistant SECNAV for Manpower and Reserve Affairs ASN(M&RA) is delegated the authority to act for SECNAV in matters of clemency and parole. (See SECNAVINST 5430.7M (NOTAL).)